LOCHT.116A

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant	:	Thomas J. Lochtefeld
Appl. No.	:	10/056893
Filed	:	January 24, 2002
For	:	SURF TOY ACTION FIGURE AND SIMULATED SURFING GAME
Examiner	:	R. W. Chiu
Group Art Unit	:	3711

CERTIFICATE OF FAX TRANSMISSION

I hereby certify that this correspondence and all marked attachments are being transmitted via facsimile to the USPTO Central Fax No. (703) 872-9306 on the date shown below:

December 29, 2004
(Date)

Glen H. Nuttall, Reg. No. 46,188

RENEWED PETITION TO WITHDRAW HOLDING OF ABANDONMENT

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

Applicant hereby requests the Commissioner to withdraw the Notice of Abandonment mailed by the Office on August 12, 2004, to enter Applicant's amendment and response filed June 1, 2004, and to issue a Notice of Allowance in the above-captioned application.

Based on the file history, the relevant facts are as follows:

1. The Patent and Trademark Office mailed a final Office Action on December 29, 2003;
2. Applicant timely mailed an amendment and response to the Office Action on June 1, 2004;
3. The Patent and Trademark Office mailed a Notice of Abandonment on August 12, 2004;
4. Applicant mailed a Request to Withdraw Notice of Abandonment on September 14, 2004;
5. The Patent and Trademark Office mailed a Decision on Petition on November 1, 2004. In the Decision, the Office acknowledged that Applicant's June 1 response was timely filed, but held that the June 1 response was not a proper response to the final Office Action. More specifically, the Decision stated that the Supervisory Patent Examiner (SPE) of Art Unit 3711 held that Applicant's June 1 response "does not render the application

allowable, and raises new issues." Unfortunately, there was no detailed explanation from the SPE as to what new issues were raised by the June 1 response.

Applicant contends that the June 1 response placed the application in condition for allowance, and Applicant respectfully requests the SPE to reconsider the Decision in consideration of the following remarks.

In the final Office Action mailed by the Office on December 29, 2003, the Examiner rejected Claims 1-15 and 19, and allowed Claims 17, 18, 41-49, 51 and 52. Claims 17 and 18 were dependent on Claim 1, and read as follows:

> Claim 17: The surf action game of Claim 1 wherein said control mechanism comprises a movable weight.
> Claim 18: The surf action game of Claim 1 wherein said control mechanism comprises a magnet.

In the June 1 response, Applicant cancelled Claims 17 and 18, and amended Claim 1 to incorporate the limitations of Claims 17 and 18. By this action Claim 1 was amended into allowable form. As such, the application was placed into condition for allowance. No new issues were raised because the Examiner had already allowed Claims 17 and 18.

Since the SPE provided no reasoning for holding that Applicant's June 1 response raised new issues, Applicant is left to conjecture as to what new issue may have been raised. Applicant notes that the amendment to Claim 1 used alternative language. More specifically, Applicant amended the claim as follows ". . . comprises a control mechanism comprising a movable weight or magnet adapted to . . . ." However, as noted in MPEP §2173.05(i)II., alternative phrases are acceptable in claims. Accordingly, the text added to Claim 1 was not objectionable, and instead placed Claim 1 in condition for allowance.

Appl. No. : 10/056893
Filed : January 24, 2002

Since the June 1 response was timely filed and placed the application in condition for allowance, Applicant respectfully requests that the Notice of Abandonment be withdrawn, the June 1 response be entered, and a Notice of Allowance be issued in the above-captioned application.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: 12/29/04

By: _____

Glen L. Nuttall
Registration No. 46,188
Customer No. 20,995
(949) 760-0404

H:\DOCS\GLN\GLN-8371.DOC
122704